



*Know the Earth...Show the Way*

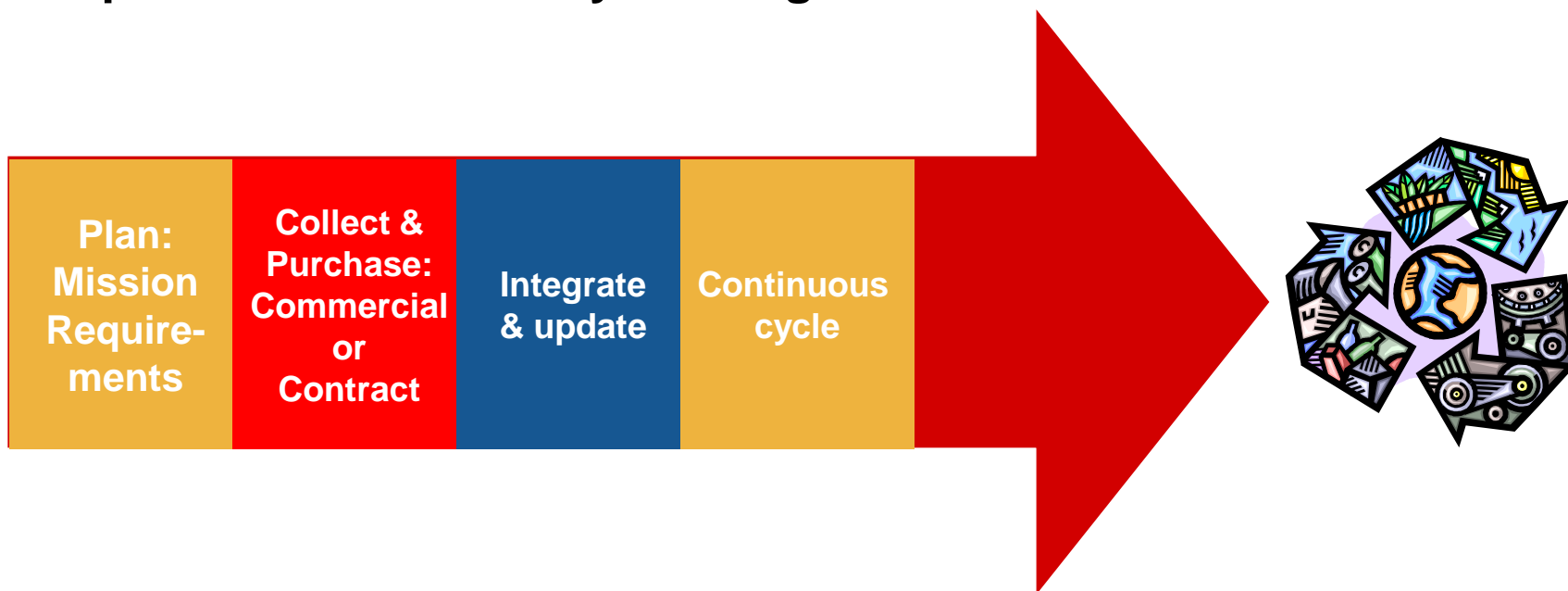
# Government Works

**Presentation to CENDI  
July 8 2009**

Laura Jennings  
Office of the General Counsel

# Cycle of Information: Originality?

- Every book in literature, science and art, borrows, and must necessarily borrow, and use much which was well known and used before." *Emerson v. Davies*, (8 F. Cas. 615, 619 Mass. 1845)
- Originality - A departure from previous practice, where a new expression is necessary to bring the work into existence



# Constitution Article 1 Section 8



- The Congress shall have Power...
- To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries
- USC Title 17 - addresses the subject matter of copyright, fair use, ownership and infringement
- Copyright law is a balance between 2 social goods:
  - uninhibited knowledge transfer
  - maintaining the incentive of producers to produce by granting exclusive control



# Copyright: Right to control

- A copyright is a bundle of exclusive rights granted to the author of an original work of expression to:
  - Make copies of the work
  - Distribute the work
  - Sell, rent, lease, license, lend
  - Make “derivative” works
  - To perform the work in public, live or by transmission
  - To display the work to the public
- Period of ownership set by law -- it's long, but not permanent
- A part or all of the rights can be sold or leased by the creator

**COPYRIGHT ARISES WHEN FIXED IN A TANGIBLE MEDIUM OF  
EXPRESSION**

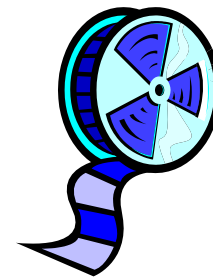


# What can be copyrighted?

## Original works of authorship



- Literary works
- Computer software
- Musical works
- Lyrics
- Dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Maps
- Motion pictures
- Sound recordings
- Architectural works



## ► Copyright Infringement



- **Infringement: a violation of the exclusive rights of the copyright owner, such as unauthorized reproduction or distribution**
- **Owner must prove the work is subject to copyright, access by the infringer, and the resulting infringing product is substantially similar to the copyrighted source**
- **Owner must also prove money damages or make a claim for statutory damages**



## What is not copyrighted?

- **Facts (except unique arrangements)**
- **Ideas (not how the idea is expressed)**
- **US Government works (except foreign jurisdictions)**
- **Expired copyrights become public domain (Disney's use of Grimms' Fairy Tales)**
- **Public availability does not equal the public domain (© not required)**

## What is “Fair Use”?

- Fair Use is an affirmative defense against a claim that the copyright has been infringed.
- Fair use analysis is specific to each situation. Four factors are considered:
  - (1) purpose and character of the use (commercial nature or nonprofit educational purposes)
  - (2) the nature of the copyrighted work
  - (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole and
  - (4) the effect of the use upon the potential market or value of the copyrighted work.



**Williams & Wilkins v. US 487 F.2d 1345**  
US Supreme Court addressed NIH copying  
of science journals. 4-4 decision. (1975)



# U.S. GOVERNMENT WORKS

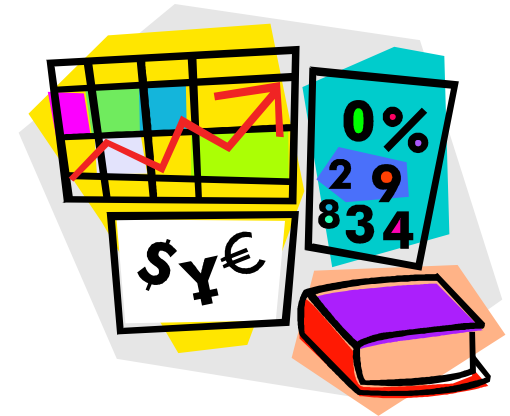


**Works of authorship created by a U.S. government employee within the scope of her employment are not covered by U.S. copyright law.**

**Private entities can assign their copyrights to the government and U.S. will own and control the copyright.**

**Foreign jurisdictions may protect USG works under the law of the foreign jurisdiction.**

## U.S. GOVERNMENT INFORMATION



- **USG: COLLECTS, PURCHASES, PRODUCES, USES, SELLS, RELEASES, AND ARCHIVES INFORMATION**
- **LAWS APPLY TO EACH PHASE**
- **EACH DEPARTMENT OR AGENCY USES INFORMATION TO MEET A STATUTORY MISSION**
- **SOME, BUT NOT ALL, HAVE A PUBLIC MISSION AS A PRIMARY MISSION**

# ▶ GOVERNMENT INFORMATION COMMERCIAL INFORMATION



- Each agency or department produces and acquires information with the legal rights needed to meet the mission.
- NASA produces information for science and public education.
- NGA produces and acquires information for defense and intelligence users. NGA buys commercial imagery for government users but not public users. The commercial imagery companies sell to the public.

# Copyright v. License

- A license is an agreement between parties that sets out particular terms and conditions for use.
- A permission to use a copyrighted work is essentially a license to use the work in accordance with the terms of the permission.
- A license can also grant more or less rights than allowed under fair use and require that notice of a copyright be displayed.
- A license is a contract between parties that arises upon mutual consent. Copyright attaches when a work is expressed in a tangible form.
- Violation of copyright is an infringement; violation of contract is a breach of contract.



# GOVERNMENT RECORDS

- **Not all Government information can be released to the public**
- **The Freedom of Information Act is the touchstone for determining public availability**
- **Contract law is the touchstone for establishing the scope of government use and consequential public access to information**





# CONCLUSION

- Understand the role of commercial industry in information sectors
- Discuss the details of information ownership with the contracting officer or program manager
- Seek legal advice from your home Office of General Counsel

